



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,185	06/26/2001	Brett O. Hall		1737

7590 12/30/2002

Brett O Hall
4206 Lazy Creek Drive
Marietta, GA 30066

EXAMINER

GIBSON, ERIC M

ART UNIT	PAPER NUMBER
----------	--------------

3661

DATE MAILED: 12/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/892,185

Applicant(s)

HALL, BRETT O.

Examiner

Eric M Gibson

Art Unit

3661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-22 is/are allowed.
- 6) ☒ Claim(s) 23-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Certificate of Correction

1. The copies of the Certificate of Correction filed with the application are improper, see MPEP §1485. A Certificate of Correction is filed to correct a published **patent**, not to correct minor errors in a **reissue application**.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by La Gambina (GB 2233372A).

a. As per claim 23, La Gambina teaches a road traffic control system including a plurality of speed bumps disposed along the roadway (page 2, third para.) and a controller responsive to a traffic command signal to impede the passage of vehicles (page 5).

b. As per claim 24, La Gambina teaches a road traffic control system including a plurality of speed bumps disposed along the roadway (page 2, third para.) and a controller responsive to a traffic command signal to impede the passage of vehicles (page 5).

3. Claim 25 is rejected under 35 U.S.C. 102(b) as being anticipated by Bonar (US004692764A).

a. As per claim 25, Bonar teaches sensing at least one parameter of a first and second vehicle (radar 12, figure 3), determining the likelihood of a collision (distance comparator 18, figure 3) and impeding the movement of at least one vehicle to avoid the collision (automatic braking system 32, figure 3).

4. Claim 26 is rejected under 35 U.S.C. 102(e) as being anticipated by Yoshioka et al. (US006035053A).

a. As per claim 26, Yoshioka teaches sensing at least one parameter of at least one vehicle and at least one parameter of at least one pedestrian (S1, figure 3, column 4, lines 25-29), determining the likelihood of a collision (S7, figure 3), and impeding the movement of at least one vehicle to avoid the collision (S9, figure 3).

Claim Rejections – 35 USC § 251

5. Claims 23-26 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d

Art Unit: 3661

1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

a. As per claims 23-26, the newly added claims are broader in scope than the originally filed claims in application 09/478,485 and do not **at least** contain the subject matter argued to be allowable over the prior art. The applicant's arguments in Paper No. 5 of application 09/478,485 specifically state that the claims overcome the prior art by a controller that determines the likelihood of collisions between vehicles, including which vehicle to slow or stop and actuates the vehicle restrictor in response to prevent collisions between vehicles. The newly added claims do not at least contain these elements and are therefore barred by recapture. The newly added claims are for a **distinct invention** different than that *claimed* in the original application and should have been submitted in a continuation or divisional application. Reissue is not proper for these claims.

Allowable Subject Matter

6. Claims 1-22 are allowed.

a. As per claims 1-22, the applicant's arguments filed 10/8/2002 have been found persuasive that the broadening of the vehicle restrictors from a "plurality" to "at least one" does avoid recapture and would still be allowable over the prior art because of the controller programmed to determine the likelihood of collisions between vehicles and to actuate the "at least one" restrictor in response to prevent collisions between vehicles.

Response to Arguments

7. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. The applicant is mistakenly attempting to argue how the invention as a whole defines over the cited prior art without regard to the broad claim language being used. The Examiner applies the broadest reasonable interpretation to the claim language.

a. For example, the applicant's table on page 10-11 of Paper No. 15 underscores his confusion over the applicability of the prior art. The claim limitations are sensing at least one parameter of at least one vehicle and at least one parameter of at least one pedestrian *or train*, determining the likelihood of a collision, and impeding the movement of at least one vehicle to avoid the collision. The broadest reasonable interpretation of the claims renders them anticipated by the reference cited above. Applicant even agrees that the reference satisfies elements a), c), and d) and argues

Art Unit: 3661

that it only “partially” satisfies element b). However, the reasons the applicant provides for distinguishing the claim over the prior art with respect to element b) *are not contained in the language of the claim*. The prior art senses parameters of an object, an object does include a pedestrian. Therefore, the element is satisfied by the teaching of the prior art. It is not required to perform any sensing in the identical way described in the specification, only that it satisfies the required element of the claim language.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric M Gibson whose telephone number is (703) 306-4545. The examiner can normally be reached on M-F.

Art Unit: 3661

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (703) 308-3873. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


WILLIAM A. CUCHLINSKI, JR.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

EMG
December 26, 2002